

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: FP/134/11/CLE

LOCATION: Sea Breeze
Sea Road
Felpham

PROPOSAL: Application for a lawful development certificate for an existing use for a rear balcony

DESCRIPTION OF APPLICATION

As above. The balcony is a timber structure positioned to the rear of the dwelling.

DESCRIPTION OF SITE AND SURROUNDINGS

The site is occupied by a timber framed dwelling.

RELEVANT SITE HISTORY

FP/133/11/	Balcony to front elevation	Refused
		06-10-2011

REPRESENTATIONS

Representations received:

Felpham Parish Council

No objection.

2 letters contesting evidence supplied: The applicant has failed to produce reliable evidence and is unable to show continuous use. This application is a mixture of misrepresentation, deceit and fraud. This is a new structure built last year.

Comments on Representations received:

Noted. The applicant has produced sworn letters that the balcony has been present for over 4 years. Over that time parts of the balcony have been removed and replaced but the Council is satisfied, on the balance of probability, that the balcony has been present for a sufficient amount of time to qualify as lawful development.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

FIRST CONSULTATION:

The evidence satisfies the test in that there are 2 letters saying that the balcony has been in situ for at least 4 years, counting back from the date of the application. I have at this date seen no contradictory evidence of this position. The evidence, judged on the balance of probability and the above criteria is sufficient and is precise and unambiguous.

It is a criminal offence to supply false or misleading information. The applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for this purpose.

SECOND CONSULTATION:

Evidence supplied suggesting the balcony has been added to and extended, or even replaced circa 2009-2010. If you conclude the whole of the balcony is new than a CLEUD should be refused.

Comments on Consultation responses:

Noted. The applicant has supplied evidence that maintenance works have been carried out on the balcony recently and this would explain why parts of the structure have not been in place at times. A further letter and photographs from a former neighbour purportedly showing the whole balcony (including roof) in place in 2000 have been supplied.

LEGISLATIVE BACKGROUND

Section 191 to 195 Town & country Planning Act 1990 and DOE Circular 10/97 Annex 8 have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy.

(i)What is judged on a balance of probability.

(ii)The onus of proof is on the applicant (and not the LPA) to adduce the evidence.

(iii)The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

The relevant time limit for the material change of use of the land to a balcony serving a residential dwelling is 4 years.

The evidence consists of sworn letters stating that the balcony has been in position for more than 4 years and supporting photographic evidence.

CONCLUSIONS

Section 191 (2)(a) of the Town & Country Planning Act 1990 states that a Certificate of Lawfulness for an existing development can be granted if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because

the time for enforcement action has expired or for any other reason). The works do constitute development and would require planning permission.

Section 171B(1) states that the time limit for enforcement action to be taken against a building, such as the balcony, is 4 years. Sworn letters and photographs supplied by the applicant and a neighbour satisfy the Council that the balcony has been in place for a period of more than 4 years and, as such, is immune to enforcement action. It is noted that claims have been made that the balcony has been added more recently than 4 years ago. Parts of the balcony have been removed and replaced over that time for maintenance and this would explain why parts of the

balcony have not always been present. However, the Council is satisfied, on the balance of probability, that a balcony has been present in this position for a period of over 4 years. It should also be noted that the Council's own aerial photography records from 2007 show a structure in the position of the current balcony.

It is therefore considered that a Certificate of Lawful Development should be issued.

RECOMMENDATION

APPROVE

The Arun District Council hereby certify that on the 22nd July 2011 the use hereby described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged boldly on the plan attached to this certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason.

The applicant has provided evidence that the balcony has been in position for over 4 years and, as such, the period of time in which enforcement action can be taken, as set out in Section 171B(1) of the Town & Country Planning Act, has expired.

This means that the development has achieved lawful status as per Section 191(2)(a) of the Town & Country Planning Act 1990.

The balcony measures approximately 4.25 metres in width by 3.9 metres in depth. Its floor area is 1.6 metres above ground level, with additional balustrading around the edges and a overhanging roof area projecting approximately 1.6 metres from the rear of the main dwelling and measuring approximately 2.7 metres in width. The balcony is associated with the use of 'Sea Breeze' as a dwelling.

Sea Breeze, Sea Road, Felpham, PO22 7AN

The development referred to is a timber balcony area to the rear of the site, attached to the western elevation of 'Sea Breeze.'

REASONS FOR REFUSAL OR INFORMATIVE(S)

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby approved shall be carried out in accordance with the following approved plans: Floor 1:50, Elevations 1:100, Roof 1:100 Drg No JC02 Rev 01 dated 24th August 2009.

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with policy GEN7 of the Arun District Local Plan.